

the total amount of Special Assessments collected from domestic utilities in a given fiscal year does not exceed \$150 million, annually adjusted for inflation.

## **PART 770—TRANSFER OF REAL PROPERTY AT DEFENSE NUCLEAR FACILITIES FOR ECONOMIC DEVELOPMENT**

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### **§ 770.1 What is the purpose of this part?**

(a) This part establishes how DOE will transfer by sale or lease real property at defense nuclear facilities for economic development.

(b) This part also contains the procedures for a person or entity to request indemnification for any claim that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of

DOE activities at the defense nuclear facility.

### **§ 770.2 What real property does this part cover?**

(a) DOE may transfer DOE-owned real property by sale or lease at defense nuclear facilities, for the purpose of permitting economic development.

(b) DOE may transfer, by lease only, improvements at defense nuclear facilities on land withdrawn from the public domain, that are excess, temporarily underutilized, or underutilized, for the purpose of permitting economic development.

### **§ 770.3 What general limitations apply to this part?**

(a) Nothing in this part affects or modifies in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(b) Individual proposals for transfers of property are subject to NEPA review as implemented by 10 CFR part 1021.

(c) Any indemnification agreed to by the DOE is subject to the availability of funds.

### **§ 770.4 What definitions are used in this part?**

*Community Reuse Organization or CRO* means a governmental or non-governmental organization that represents a community adversely affected by DOE work force restructuring at a defense nuclear facility and that has the authority to enter into and fulfill the obligations of a DOE financial assistance agreement.

*Claim* means a request for reimbursement of monetary damages.

*Defense Nuclear Facility* means “Department of Energy defense nuclear facility” within the meaning of section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

*DOE* means the United States Department of Energy.

*DOE Field Office* means any of DOE’s officially established organizations and components located outside the Washington, D.C., metropolitan area. (See Field Office Manager.)

*Economic Development* means the use of transferred DOE real property in a

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way that enhances the production, distribution, or consumption of goods and services in the surrounding region(s) and furthers the public policy objectives of the laws governing the downsizing of DOE's defense nuclear facilities.

*Excess Real Property* means any property under DOE control that the Field Office, cognizant program, or the Secretary of Energy have determined, according to applicable procedures, to be no longer needed.

*Field Office Manager* means the head of the DOE Operations Offices or Field Offices associated with the management and control of defense nuclear facilities.

*Hazardous Substance* means a substance within the definition of "hazardous substances" in subchapter I of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601(14)).

*Indemnification* means the responsibility for reimbursement of payment for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage, including business losses consistent with generally accepted accounting practices, which involve the covered real property transfers. Indemnification payments are subject to the availability of appropriated funds.

*Person or Entity* means any state, any political subdivision of a state or any individual person that acquires ownership or control of real property at a defense nuclear facility.

*Pollutant or Contaminant* means a substance identified within the definition of "pollutant or contaminant" in section 101(33) of CERCLA (42 U.S.C. 9601(33)).

*Real Property* means all interest in land, together with the improvements, structures, and fixtures located on the land (usually including prefabricated or movable structures), and associated appurtenances under the control of any federal agency.

*Release* means a "release" as defined in subchapter I of CERCLA (42 U.S.C. 9601(22)).

*Underutilized Real Property or Temporarily Underutilized Real Property* means the entire property or a portion of the

real property (with or without improvements) that is used only at irregular intervals, or which is used by current DOE missions that can be satisfied with only a portion of the real property.

### **§ 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?**

(a) Field Office Managers annually make available to Community Reuse Organizations and other persons and entities a list of real property at defense nuclear facilities that DOE has identified as appropriate for transfer for economic development. Field Office Managers may use any effective means of publicity to notify potentially-interested persons or entities of the availability of the list.

(b) Upon request, Field Office Managers provide to interested persons and entities relevant information about listed real property, including information about a property's physical condition, environmental, safety and health matters, and any restrictions or terms of transfer.

### **§ 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?**

Any person or entity may request that specific real property be made available for transfer for economic development pursuant to procedures in § 770.7. A person or entity must submit such a request in writing to the Field Office Manager who is responsible for the real property.

### **§ 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?**

(a) *Proposal*. The transfer process starts when a potential purchaser or lessee submits to the Field Office Manager a proposal for the transfer of real property that DOE has included on a list of available real property, as provided in § 770.5 of this part.

(1) A proposal must include (but is not limited to):

(i) A description of the real property proposed to be transferred;

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(ii) The intended use and duration of use of the real property;

(iii) A description of the economic development that would be furthered by the transfer (*e.g.*, jobs to be created or retained, improvements to be made);

(iv) Information supporting the economic viability of the proposed development; and

(v) The consideration offered and any financial requirements.

(2) The person or entity should state in the proposal whether it is or is not requesting indemnification against claims based on the release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities.

(3) If a proposal for transfer does not contain a statement regarding indemnification, the Field Office Manager will notify the person or entity by letter of the potential availability of indemnification under this part, and will request that the person or entity either modify the proposal to include a request for indemnification or submit a statement that it is not seeking indemnification.

(b) *Decision to transfer real property.* Within 90 days after receipt of a proposal, DOE will notify, by letter, the person or entity that submitted the proposal of DOE's decision whether or not a transfer of the real property by sale or lease is in the best interest of the Government. If DOE determines the transfer is in the Government's best interest, then the Field Office Manager will begin development of a transfer agreement.

(c) *Congressional committee notification.* DOE may not transfer real property under this part until 30 days have elapsed after the date DOE notifies congressional defense committees of the proposed transfer. The Field Office Manager will notify congressional defense committees through the Secretary of Energy.

(d) *Transfer.* After the congressional committee notification period has elapsed, the Field Office Manager:

(1) Finalizes negotiations of a transfer agreement, which must include a provision stating whether indemnification is or is not provided;

(2) Ensures that any required environmental reviews have been completed; and

(3) Executes the documents required for the transfer of property to the buyer or lessee.

### **§ 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?**

DOE generally attempts to obtain fair market value for real property transferred for economic development, but DOE may agree to sell or lease such property for less than fair market value if the statutory transfer authority used imposes no market value restriction, and:

(a) The real property requires considerable infrastructure improvements to make it economically viable, or

(b) A conveyance at less than market value would, in the DOE's judgment, further the public policy objectives of the laws governing the downsizing of defense nuclear facilities.

### **§ 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?**

(a) If an agreement for the transfer of real property for economic development contains an indemnification provision, the person or entity requesting indemnification for a particular claim must:

(1) Notify the Field Office Manager in writing within two years after such claim accrues under § 770.11 of this part;

(2) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with evidence or proof of the claim;

(3) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with copies of pertinent papers (*e.g.*, legal documents) received by the person or entity;

(4) If requested by DOE, provide access to records and personnel of the person or entity for purposes of defending or settling the claim; and

(5) Provide certification that the person or entity making the claim did not

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contribute to any such release or threatened release.

(b) DOE will enter into an indemnification agreement if DOE determines that indemnification is essential for the purpose of facilitating reuse or redevelopment.

(c) DOE may not indemnify any person or entity for a claim if the person or entity contributed to the release or threatened release of a hazardous substance or pollutant or contaminant that is the basis of the claim.

(d) DOE may not indemnify a person or entity for a claim made under an indemnification agreement if the person or entity refuses to allow DOE to settle or defend the claim.

### **§ 770.10 When must a person or entity, who wishes to contest a DOE denial of request for indemnification of a claim, begin legal action?**

If DOE denies the claim, DOE must provide the person or entity with a notice of final denial of the claim by DOE by certified or registered mail. The person or entity must begin legal action within six months after the date of mailing.

### **§ 770.11 When does a claim “accrue” for purposes of notifying the Field Office Manager under § 770.9(a) of this part?**

For purposes of § 770.9(a) of this part, a claim “accrues” on the date on which the person asserting the claim knew, or reasonably should have known, that the injury to person or property was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located.

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